

No. 11(112)-80-3 Lab/10443.—In pursuance of the provision, of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M's United Oil Mills Machinery & Spares Pvt. Ltd., Mathura Road, Ballabgarh : —

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference Nos. 99 to 102 all of 1977

between

S/SHRI RADHEY SHYAM, SIRI CHAND, RAMESH KUMAR CHAUHAN AND
AMARJIT SINGH, WORKMEN AND THE MANAGEMENT OF M/s. UNITED
OIL MILLS MACHINERY & SPARES PRIVATE LIMITED, MATHURA
ROAD, BALLABGARH,

Present :—

Shri S.R. Gupta for the workmen.

Shri S.L. Gupta for the management.

AWARD

By order No. ID/FRD/197-200-A-77/26697, dated 19th July, 1977, the Governor of Haryana referred the following dispute :—

Whether the termination of services of Shri Radhey Shyam was justified and in order? If not, to what relief is he entitled ?

By order No. ID/FRD/197-200-A-77/26691, dated 19th July, 1977, the Governor of Haryana referred the following dispute

Whether the termination of services of Shri Siri Chand was justified and in order ? If not, to what relief is he entitled ?

By order No. ID/FRD/197-200-A-77/26685, dated 19th July, 1977, the Governor of Haryana referred the following dispute :—

Whether the termination of services of Shri Ramesh Kumar Chauhan was justified and in order ? If not, to what relief is he entitled ?

By order No. ID/FRD/197-200-A-77/26703, dated 19th July, 1977, the Governor of Haryana referred the following dispute :—

Whether the termination of services of Shri Amarjit Singh was justified and in order ? If not, to what relief is he entitled ?

between the management of M/s. United Oil Mills Machinery and Spares Private Limited, Mathura Road, Ballabgarh and its workmen S/Shri Radhey Shyam, Siri Chand, Ramesh Kumar Chauhan and Amarjit Singh, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947.

On receipt of the order of reference notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 29th September, 1977 :—

1. Whether the domestic enquiry held by the management is proper and in accordance with the principles of natural justice ?
2. Whether the workmen concerned are gainfully employed elsewhere ? If so, to what effect ?
3. Whether the termination of services of Shri Radhey Shyam, S/Siri Chand, Ramesh Kumar Chauhan and Amarjit Singh were justified and in order ? If not, to what relief are they entitled ?

And the case was fixed for the evidence of the management. Issue No. 1 was tried preliminary in this case which has been decided against the management,—vide my predecessor's order and the case was thereafter fixed for trial on remaining issues. The management then examined Shri N.C. Bhattacharya their Works Manager as MW-2, Shri Lila Dhar, Foreman as MW-3, Shri J.S. Kohli, Director Security Guards Corps as MW-4 and closed their case. Then the case was fixed for the evidence of the workmen. The workmen examined Shri Radhey Shyam, the workman concerned as WW-2, Shri Siri Chand, Amarjit Singh and Shri Ramesh Kumar the workmen concerned were also tendered for cross-examination. The workmen also examined Shri Kishan Chand a workman of the management as WW-6, and Shri Jagdish Parshad another workman of the management as WW-7. The representative for the workmen Shri S.R. Gupta produced certificate of registration of trade union dated 8th May, 1973, No. 214 of 1973 as Ex. W-1. He also prayed that the file of general dispute may also be called at the time of arguments and closed his case. Arguments were heard. I now give my findings issue wise :—

Issue No. 2:—All these references were consolidated and it was ordered that evidence shall be recorded in reference No. 99 of 1978 which shall be read as evidence in reference Nos. 100 to 102 of 1977. MW-2 stated that a theft of some gas cylinder and gas carter welding cable (worth Rs. 5000 only) had taken place on the night between 29th and 30th January, 1977. On 31st January, 1977, he came to know of theft while he was in Delhi at head office and then came back to the factory. Shri Kohli the Security Director was investing on the theft. He and Shri K.L. Anand also joined. Welding cable had been cut by a sharp instrument and was lying on the table of the fitter. The workmen obstructed the investigation. Major Kohli told him to report to the police as he was helpless. He then went to the police station and reported with Shri Kohli. In the morning two police constables came and took away S/Shri Risal Singh and Rattan Lal to the police station for investigation. Then all the workmen raised noise and abused Shri Kohli and threatened to kill. About 40-50 workmen gheraoed him. The concerned workmen led the gherao and noise. He and Shri K.L. Anand advised the workmen and Major Kohli went away. Major Kohli was gheraoed for about half an hour and the concerned workmen insulted him by calling him thief. He shall be beaten. When these five workmen told the other workmen and threatened them that they should not work and the work stopped. He reported to the Conciliation Officer who sent Labour Inspector Shri Sher Singh and the Labour Inspector had seen all that what had happened. The work stopped up to 2nd February, 1977. In cross-examination he admitted that the stolen articles had not been recovered even by now, nor any criminal case was pending in any criminal court even at present about that theft. The case did not start at all. He did not bring the copy of the report lodged with the police. But he stated that he could produce that. Shri Rattan Lal was Helper and Shri Risal Singh was Chowkidar. On query he had told the police that S/Shri Rattan Lal and Risal Singh were on duty at the time of theft in addition to the Security Guards including Shri Badan Lal whom he did not name before the police, as he was not inside the factory on duty. Which was not in his knowledge that Shri Badan Lal was not named before the police as Shri Kohli wanted to save him or whether Shri Kohli wanted to save him at all. The management did not make any claim from the Director, Security Force regarding this theft, nor wrote any letter to them for recovery of the stolen article. He admitted that Major Kohli did not give in writing that he was obstructed in investigation. MW-1 was present. The strength of workmen at that time was about 70 or 75 and there was no trade union at that time nor have it at present. He did not remember any settlement of the year 1974. He did not know whether concerned workmen were office bearers of trade union in January, 1977. He admitted that general reference was pending before the Tribunal. He could not name the workman attending the conciliation proceedings but he had attended. He admitted that the management did not chargesheet any other workman for gheraoing and investigating the workmen for the instant incident. He could not tell about the remaining 35 persons as to what were they doing at the time of the gherao and after. He could not tell the name of other workmen participating in gherao, although he refreshed his memory two times. The 3rd time he named one Shri Balbir Singh and Chander Maji after a pause. He could not tell the name of any of the 35 workmen. He also stated that the General Secretary of the union had not told Major Kohli in his presence as to why the workmen were being harassed. S/Shri Amarjit Singh and Siri Chand were taken by the police. The workmen came on duty on 3rd February, 1977. He did not bring the copies of letters written to the Conciliation Officer, nor attendance register. He denied that he had deposed false and concocted statement. He denied that these workmen have been victimised. MW-3 corroborated the fact of theft and stated that he had made a report of theft to the Works Manager. The said three investigating Officers had called Shri Risal Singh and Rattan Lal for investigation. Then these four concerned workmen raised a noise from the workshop that none of the workman had committed theft and investigation was going without any basis. The police had taken away two workman S/Shri Risal Singh and Rattan Lal. There after Shri Kohli was gheraoed by about 47-50 workmen and the four concerned workmen were near Shri Kohli. He did not hear what these four concerned workmen were telling to other workmen and Shri Kohli. The workmen were running away from the workshop and he was also behind them to ask the reason. When he reached the spot he saw S/Shri Anand and Bhattacharya advising the workmen. The work had stopped on 1st and 2nd February, although machines were kept running but without work. The workmen were shouting that they had been arrested and they stopped the work. These four workmen were also against them. Shri Kohli was under gherao for about half an hour. There were 70-75 workmen in the factory. S/Shri Radhey Shyam, Siri Chand, Ramesh Kumar, Amar Deep, Saroop Singh, Balbir Singh, Ajai Kumar, Dharam Paul, Mahinder Paul, Ved Paul, Hari Lal, Nem Raj, Ayub Khan, Girdhari Lal, Chander Bhan, Shriv Lal, Hem Nath and others were amongst those who were around Shri Kohli. Several people did not gherao Shri Kohli. He did not know whether Shri Badan Singh was in the employment of the management at that time.

He could not identify Shri Badan Singh. In cross-examination he stated that he did not know about the formation of a trade union. He admitted that these four concerned workmen were leading the demands of other workmen and were taking leading part in negotiations for demands and for the problems of the workmen. He did not hear the workmen telling Shri Kohli as to why two workmen had been involved without any fault. He heard nothing when the workmen and Shri Kohli were telling to each other or when the workmen were talking to the other workmen present there. Shri Anand and Shri Bhattacharya were just near Shri Kohli. He could not notice whether the workmen were in front of the above said two advisors or were on the sides of them or on which side. He also admitted that there was no stopping of any workman by any other workman or any officer, although he had heard the workmen telling to stop the work. He admitted that there were no abuses or insulting words heard or spoken. Nor obstruction of any kind, or assault by any person present there. He had seen the above said two Officers advising the workmen and the workmen were listening to them. He admitted that he was in the court room when Shri Bhattacharya was being examined and he had listened the whole of his statement.

MW-3 had belied the statement of MW-2, MW-2 has admitted the presence of MW-3 and MW-3 has stated nothing against these workmen. MW-3 has stated that 20 workmen and others were standing around Shri Kohli. MW-3 has belied that abuses were hurled, insults were thrown or obstructions of any kind was made. The whole case of the management falls down. The statement of MW-3 who is Foreman of machinshop of the management where from it was alleged that about 50-55 workmen came. The incriminating story of the management where from it was alleged that about 50-55 workmen came. The incriminating story of the management against these four concerned workmen is falsified by MW-3. MW-3 has also admitted that these four concerned workmen were negotiating the demands of other workmen and were leading their demands and for solution of their problems. MW-4 stated that he was contractor of the management. He was called by the management and was informed of some theft. He went on 31st January, 1977 and began to investigate. Shri Bhattacharya the Manager, Shri Ghandhi the Director, and Shri Anand Technical Director were with him during investigation. 30th January was Sunday. One helper and one chowkidar Shri Risal Singh was on duty. He stated investigation from the said two persons, S/Shri Radhey Shyam and Amarjit Singh came there and told that investigation could not be made. They were followed by 6-7 other workmen. There was much noise. MW-4 then advised the management to report the matter to the police which was done and hedropped the investigation. The matter was reported to the police the same afternoon. He had also gone to the police.

From this part of his statement no incriminating circumstance has appeared against these workmen.

Next day when he was going to the factory he found two constables going to investigate. The police took away Shri Risal Singh and that helper with them to the police station and when he was leaving the factory 50-60 workmen came out and gheraoed his car.

MW-3 has stated that workmen were running away from the workshop and he was also running behind them to ask the cause and when he reached the spot Shri Kohli was present. It means that MW-3 was on the scene from the very beginning and he has belied all that has been levelled against these workmen.

MW-4 then stated that these four concerned workmen and another were in front. They were leading other workmen. They were much agitated and used abusive language and demanded from him to produce one Guard of his, although his guard was not present on Saturday. He stated that the workmen doubted that his Security Guard had committed the theft. He assured them that he shall be going to his village and shall find out. Meanwhile S/Shri Bhattacharya and Anand came there and pacified the workman.

The workmen doubted that theft might have been committed by one Security Guard of MW-4, therefore they were feeling aggrieved but MW-4 had dropped the investigation earlier. MW-4 had also told the workmen that he would go to the village and find out regarding his security guard who was believed by the workmen to be involved in theft.

It seems that each side was pressing for his view and direction of investigation but MW-3 has very clearly stated that he did not hear any abuse. There were about 50-60 workmen. MW-4 has further stated that the gherao lasted about for half an hour and Badan Singh Chowkidar belonged to his corps who was no more in his employment and had left his service long ago. Two workmen had told him that investigation in that way should not be made and there was noise and then MW-4 advised the management to report the matter to the police and dropped his investigation. The matter was reported to the police.

It is no where in evidence of either parties as to what happened in police investigation. Where a criminal case was registered or not and how it ended. Whether further proceedings or any kind in the matter of theft as regards police and the criminal proceedings took place or not. The parties have placed a dark curtain on further proceedings in the criminal matter. During arguments the representative for the management stated that no further proceedings took place as the management did not pursue the criminal matter.

MW-4 stated that 2nd day he had gone to the factory of his own and was not asked by the police to associate. He had gone to the management to inform them about his men who was absent from duty on Saturday. This statement of MW-4 does not help the workmen in any way. The Security Contractor could go to the factory of his own. MW-4 admitted that there exist a trade union of workmen at that time in the factory.

About gherao, MW-4 has stated that he was alone in the car when the workmen gheraoed him; these four concerned workmen were on one point of one side in curve shape in front of his car. On the other side there was wire fencing.

By this situation MW-4 has formed his opinion that he was gheraoed. On one side of the car there was wire fencing on the other side these four workmen were standing in front of his car. Gherao means something more than this situation. Gherao should have an element of confinement or restraint. If confinement is not there, restrain could mean gherao but MW-4 has not stated a single word as to any restraint was placed on him by the workmen. MW-4 has also admitted that none of the workmen tried to manhandle or damage his car. He stated that the workmen were shouting in loud that his men who was absent on Saturday had committed theft and MW-4 should produce him. Loud shouts were in form of slogans also. This part of his statement amounts to this fact that the workmen were laying a demand that the man of MW-4 be produced for investigation about theft and the workmen believed that that man had committed theft, therefore, they were raising slogans in trade union movement. Demand in slogans should not be prohibited. But if the slogans are of some other kind such as obscene, penal, they are acts of misconduct. Slogans only to the effect that some particular person may also be produced for investigation, is no misconduct. It looks as a demand.

It seems that the workmen believed that no workman has committed theft and the same person of MW-4 has committed theft and the workmen will not get justice hence slogans had a kind of persistence in their demands.

MW-4 has also admitted that the workmen were also saying that the two workmen who had been taken by the police were innocent and had been taken to the police wrongly. I think this does not amount to misconduct. It is laying down their own grievances before the management. MW-4 has volunteered that the workmen were also saying that his Security Guard, although absent on Saturday might be involved in theft and he might have committed theft so MW-4 should produce him and should send him to the police for investigation. This part of his statement also not incriminating the concerned workman. It looks that the workman had a genuine belief that their two workmen had not committed theft and the men of security guard might have committed theft. The workmen wanted a change in the course of direction of investigation so as to find out the real culprit and so as to make the investigation on broader line and from all sources which could cause doubt. Had it been like in the form of suggestion it would not have matter but it got the form of a demand from the workmen hence the management and MW-4 felt it. I think that even in the form of a demand it did not amount to misconduct. It amounts to laying their grievance before the management in a broader form by generally all the workmen.

The learned representative for the management also argued that these four concerned workmen were leading but no specific act of leading has been attributed to these four workmen such as of giving first slogan or of asking the workmen to give a particular act or for asking the workmen for refraining for doing a particular act. Except this that these four concerned workmen were in front, no other leading act is attributed to these four concerned workmen and the only act of standing in front, in my opinion, cannot amount to leading.

The learned representative for the management also argued that the workmen abused and gheraoed and consisted of all other workmen. Specific abuses have not been mentioned and when mentioned by MW-4 on a question by the representative for the workmen, he did not name the workman who gave these abuses. In these circumstances, when 50-60 workmen are involved and an act of misconduct is not specifically attributed to some particular and specified person or persons, it would not be justiciable to hold these four concerned workmen guilty of misconduct.

WW. 2—Shri Radhey Shyam the workman concerned stated that he was the President of the union and he and the other concerned workmen had raised the demand and the general reference was pending before the Tribunal and the management dismissed him being annoyed for his trade union activities. On Monday morning he heard about a theft and two of their men were called in the office, their General Secretary including from the management about the reasons for calling these workmen. The General Secretary came down the stairs and the management called for the police. The police took away these two persons. The workmen asked for the reasons of sending these two workmen to the police. Then the management brought them from the police station. Next day the management again called for the police. The police reached and the management called the four concerned workmen and another Shri Saroop Singh and sent them in a car with the police. All of them were union leaders. In

the evening the management consisting of S/Shri Lalit, Kohli and Anand went to the police station and got them released. They then went to their duty on the 3rd. They worked peacefully. On the 4th the management did not allow them on duty. Then they sent this demand notice. They never shouted any slogans against any of the management or against Shri Kohli. They gheraod none. W.W. 3, W.W. 4, and W.W. 5 the workmen concerned were tendered for cross-examination. In cross-examination he stated that the General Secretary had talked only with S/Shri Lalit, Anand and Kohli upstairs. The representative for the management could not bring out any point in his favour, from cross-examination of this witness W.W. 2. W.W. 6 and W.W. 7 other workmen of the management also corroborated the statement of W.W. 2. They stated that the concerned four workmen were leaders of the workmen and were active trade unionist. They also stated that none gheraod any Officer and none raised slogans and none threatened.

The learned representative for the workmen argued that the dismissal of the workmen was firstly in violation of law, secondly not in order, thirdly it was a victimisation and fourthly it was not just on facts. He cited rule 30(c) of the standing orders of the management and argued that it was violated. Reasonable opportunity for representation against the penalty proposed was not given by the management to the concerned workmen. He also argued that article 311 of the Constitution of India has also been violated by the management for not providing the above said opportunities. He also argued that the management did not consider the past records of the concerned workmen as per rule 30(f) of the standing orders for finding out any aggravating or extenuating circumstance. He cited in this connection 1978 I LLN page 37, 1979 II LLN page 212, 1978 Lab. I.C. page 891. He also argued the violation of rule 30 (c) of the standing orders that the dismissal was not done by the competent authority. He argued that the standing orders have made a distinction between the employer and the Manager and in the instant case the employer has not dismissed but the manager has dismissed and employer is the Managing Director,—vide clause 2(c) and the Manager is a different person as per clause 2(b) of the standing order. He cited 1968 LLJ page 571 (S. C.). Then he argued that it was a case of victimisation. The act of misconduct was done, as per the management by 50-60 workmen but the management choose these 1 concerned workmen who were leaders of trade union raising the demands of the workmen, for victimisation. He also argued that no specific act has been attributed to the concerned workmen. If the dismissal is irrational and discriminator it is victimisation and not at all justified. He cited 1964 I LLJ page 436, 1977 II LLJ page 489, AIR 1972 S.C. page 763. Then he argued that the charge-sheet does not contain misconduct of abuses. Moreover to particular act has been stated in the charge-sheet and the evidence of some of the witnesses for the management is beyond the charge sheet. In this connection he cited 1979 Lab. I.C. 155, he then argued that Shri Sher Singh the Labour Inspector was a material witness. His evidence would have been the best evidence of a public servant. The management has stated Shri Amar Singh had come to the factory and had seen the occurrence but the management has withheld him. He argued that an inference may be drawn against the management that had they produced Shri Sher Singh the Labour Inspector in their witness he would ot have supported their case. He also argued that Shri Kohli is an interested person. He further argued that there was no obstruction of any kind. He also argued that misconduct is not proved but if at all it has assumed that it has been proved then it is an excessive punishment and the Tribunal can act under section 11 (a) providing lesser punishment if justified. He then argued that rule of back wages is a normal rule and 1978 II LLJ page 474 (S.C.) supports his view. He further argued that in Gujrat Steel case, their Lordships have held that dismissal resulting in unemployment should be awarded cautiously. As regards excessive punishment, the learned representative for the workmen cited 1978 I LLN page 562, 1979 II LLJ page 280, 1978 Lab. I.C. 1143, 1978 I LLN page 589. He argued that misconduct should be specified and must be definite which is not in this case.

The learned repesentative for the management also cited the following rulings —

1963 (7) FLR page 333, 1962 (6) FLR page 361, FJR 1963 (24) page 406, 1961 II LLJ page 686 S.C., 1963 I LLJ page 684 S.C. 1953 II LLJ page 876, 1960 I LLJ page 518 S.C. 1971 II LLJ page 340 S.C.

The learned representative for the management replied in arguments that the workmen created tention, gheraod, abused, threatened to kill and resorted to tool down strike. He argued that W.W. 1 has corroborated the story of the management in part regarding enquiry and investigation by security contractor. He further argued that being office bearer of the trade union is no licence to commit acts of misconduct. He also argued that the concerned workmen have proved these disloyal and have committed serious acts of misconduct. I have considered all the arguments put forward by the parties and have gone through the various rulings cited by the representatives for the parties.

It is proved fact that the concerned workmen were office bearers of trade union and were leading the workmen in raising their demands in general and representing the workmen before the management for amelioration of their grievances.

The whole evidence before me leads me to hold that the management presumed that the concerned workmen have led the alleged acts of misconduct as they were leaders and were raising general demands of the workmen. But law cannot take such view. In absence of any specific act which may constitute the role of leaders on the part of the concerned workmen as far as the alleged acts of misconduct are concerned, it would not justifiable to hold them guilty of the acts of alleged misconduct.

As already discussed, the substance of the evidence on the file leads to form the opinion that the workmen were persisting in generally for a change in the course of investigation act as to include in it the person of the Security Guard and that innocent person might not be penalised by confining doubt on only two persons. They wanted to broaden the scope of investigation for justice.

The learned representative for the workmen drew my attention to the order of dismissal which is passed by the Manager. He also drew my attention towards the provisions contained in the Certified Standing Order definition clause (c) which defines the management as Managing Director or Directors of the establishment or any other person authorised to perform the duties and function of the Managing Director/Director of the company. The representative of the management stated that the management had been defined in clause (b) which runs thus :—

Management means Factory Manager, Manager and Works Manager.

The representative for the workmen showed me copy of the standing orders with him where clause (b) defines the Manager and not the management. He stated that the management was defined in clause (c) and not (b). Here there was a typographical mistake. According to the standing orders, dismissal order was to be passed by the employer and not the Manager as in this case. He also cited violation of clause 28 of the standing orders where it was necessary to give 48 hours time to the workmen to submit his explanation whereas in the present case only 24 hours were given to the workmen vide Exhibit M-6. He argued that the violation of standing orders were fatal to the orders of dismissal. The representative for the workmen also argued that second show cause notice before passing final order of dismissal was not given to the workmen and this defect cannot be cured. He cited 1975 FJR Vol. 47 page 350 (S.C.) wherein it is held as under :—

“Where certain workmen have been found guilty of misconduct in a domestic enquiry and the standing orders provide that where the employer proposes to impose a punishment of dismissal, the workmen shall be given notice in writing to show cause within a specified period why the proposed punishment may not be awarded, such notice is not an idle formality but is intended to give a reasonable opportunity to the workmen to show cause against the proposed punishment, which a condition precedent which must be satisfied before an order of dismissal can be validly passed by the employer. Where such notice issued by the employer in effect gives the workmen hardly a couple of hours within which to show such cause it could hardly be considered as giving a reasonable opportunity and would amount to contravention not only of the standing orders but also principles of natural justice. I, therefore, decide issue No. 3 against the management.

Issue No. 2.—There is not an iota of evidence on this issue hence I decide this issue also against the management.

As a result of my findings on the issues. I answer the reference and give my award that the termination of services of the workmen concerned S/Shri Radhey Shyam, Siri Chand, Ramesh Kumar Chauhan and Amarjit Singh is neither justified, nor in order. I set aside their dismissal. S/Shri Radhey Shyam, Siri Chand, Ramesh Kumar Chauhan and Amarjit Singh are entitled to reinstatement with continuity of service and with full back wages and I order accordingly.

Dated the 29th August, 1980.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal Haryana Faridabad.

No. 798, dated 29th the August, 1980.

Forwarded (four copies) to the Secretary to Government Haryana Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal Haryana, Faridabad.

No. 11(112)-87-3-La3/10444.—In pursuance of the provision of section 17 of the Industrial Dispute Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Dhanda Engineer (P) Ltd. Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER INDUSTRIAL TRIBUNAL, HARYANA FARIDABAD.

References Nos. 255 of 1976, 22 and 23 of 1977 and 246 of 1978

between

The workmen and the management of, M/s. Dhanda Engineers (P) Ltd., Faridabad.

Present.—Shri S. R. Gupta, for the workmen.

Shri R. O. Sharma, for the management.

AWARD

By order No. ID/45071, dated 8th December, 1976, the Governor of Haryana referred the following dispute :—

1. Whether the workmen are entitled to the grant of bonus for the year 1975-76 at a higher rate of than 10 per cent ? If so, with what details ?

By order No. ID/6203, dated 18th February, 1977 the Governor of Haryana referred the following dispute :—

1. Whether the workmen are entitled to the grant of bonus for the year 1975-76 at a higher rate than 10 per cent ? If so, with what details ?

By order No. ID/6203, dated 18th February, 1977, the Governor of Haryana referred the following dispute :—

1. Whether the workmen are entitled to the grant of bonus for the year 1975-76 at a higher rate than 10 per cent ? If so, with details ?

By order No. ID/FD/666-77/33448, dated 13th July, 1978, the Governor of Haryana referred the following disputes :—

1. Whether all the categories of the workmen should be classified and grades and scales of pay be framed ? If so, with what details and from which date ?
2. Whether the workmen should be given housing accommodation or house rent allowance in lieu thereof ? If so, with what details ?
3. Whether the workmen are entitled to the grant of bonus at the higher rate than declared by the management for the year 1976-77 ? If so, with what details ?
4. Whether the workmen are entitled to the grant of cycle allowance ? If so, with what details ?
5. Whether the workmen are entitled to the grant of Dearness Allowance linked with cost of living numbers ? If so, with what details ?
6. Whether the workmen are entitled to the grant of tea allowance ? If so, with what details ?
7. Whether the workmen should be supplied necessities of life at subsidised rates ? If so, with what details ?
8. Whether the workmen are entitled to the grant of night allowance ? If so, with what details ?
9. Whether the workmen working in paint shop, Heat treatment, casting work etc. should be given milk, gur and oil or an allowance in lieu thereof ? If so, with what details ?
10. Whether the workmen should be supplied uniforms with shoes ? If so, with what details ?
11. Whether the workmen are entitled to the grant of washing allowance ? If so, with what details ?
12. Whether the workmen should be granted interest free loan ? If so, with what details ?
13. Whether a scheme to the grant of incentive bonus be framed ? If so, with what details ?

On receipt of the order of references, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, issues were framed on 5th July, 1977 and 6th July, 1979 respectively. And the case was fixed for the evidence of the workmen. Then a settlement Exhibit M-1 was filed. This settlement pertained to reference No. 225 of 1976, 22 and 23 of 1977 and 246 of 1978. Therefore, this award shall dispose off all the above references. The representative for the workmen filed objections on the settlement. Arguments were heard. The representative for the workmen stated that the settlement was not binding on the workmen and it is not arrived at before the Tribunal where the demands are pending adjudication. The settlement was arrived at by a union which had been dissolved and ad hoc committee stood constituted in his place. He also stated that the settlement is not reasonable. On the other hand the representative for the management argued that the settlement is signed by the President, General Secretary, Joint Secretary, Cashier and seven other representatives. The settlement is under section 12(3) of the Industrial Disputes Act. All the pages of the settlement are signed by the parties. He also argued that the settlement had been implemented. He drew my attention to authority letter signed by about 223 workmen authorising their representatives to sign the settlement. I have given

my cool thought to the case and think that in the interest of Industrial peace and harmony between the management and the workmen settlement at any stage of the proceedings is always good. The settlement does not lack legality. Therefore, I accept it and give my award in terms of the settlement. The settlement M/s Exhibit M-1.

Dated: 28th August, 1980

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal Haryana Faridabad.

No. 799, dated 29th August, 1980

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal Haryana, Faridabad.

No. 11(112)-80-3-Lab/10445.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. East India Cotton Manufacturing Co. Ltd., NIT, Faridabad.

BEFORE SHRI M.C. BHARDWAJ PRESIDING OFFICER INDUSTRIAL TRIBUNAL HARYANA FARIDABAD

Reference No. 214 of 1978

Between

Shri Madan Lal Sharma workman and the management of M/s. East India Cotton Manufacturing Co., Ltd., NIT, Faridabad.

Present.—Shri R.N. Roy for the workman.

Shri R.C. Sharma for the management.

AWARD

By order No. ID/FD/678-77/31670 dated 11th July, 1978, the Governor of Haryana referred the following dispute between the management of M/s. East India Cotton Manufacturing Co. Ltd., N.I.T., Faridabad and its workman Shri Madan Lal Sharma to this Tribunal for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the dismissal of Shri Madan Lal Sharma was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 29th November, 1978 :—

1. Whether the present dispute is an Industrial Dispute as per the Industrial Disputes Act.
2. Whether the Mercantile Employees Association has no locus standi to raise the demand ?
3. Whether the domestic enquiry and findings is fair, reasonable and is in accordance with the principles of natural justice ?
4. Whether dismissal of the workman concerned was justified and in order ?
5. Relief.

And the case was fixed for the evidence of the workman. But the management led their evidence on issues No. 1 to 3. They examined Shri B.B. Gupta and closed their case. Then the case was fixed for the evidence of the workman on these issues who examined himself as his witness and Shri R.N. Roy his authorised representative and closed his case. Arguments were heard. Now I give my finding on issues No. 1 and 2 :—

Issue No. 2.—In the written statement the management have took an objection that there was no dispute between Shri Madan Lal Sharma workman and the respondent because the workman never raised an Industrial

Dispute. They also took the plea that the reference was the result of demand notice dated 15th March, 1978 which was served by the President Mercantile Employees Association who had no locus standi to serve the demand notice. The workman appeared in the witness box as WW-1 and stated that he made a complaint to the union which was Exhibit W-1. In cross-examination he stated that his demand notice was when only 50-60 workers were members of this union but they did not hold any meeting for raising the demand. He further stated that there may be 3000 to 4000 workers in the employment of the respondent. Shri R.N. Roy WW-2 stated that he was President of the Mercantile Employees Association which is registered at serial No. 319. Shri Madan Lal Sharma was their member. He sent demand notice Exhibit W-2 to the management by registered post. In cross-examination he stated that only 60 workers of the respondent company were members at that time. He also stated that the demand notice was supported by Executive Committee of Mercantile Employees Association and such support is called espousal by them. He also stated that the dispute was under section 2(a) of the Industrial Disputes Act.

The learned representative for the management argued that demand notice Exhibit W-2 was signed by the President of the Mercantile Employees Association New Rajindra Nagar, New Delhi. It was neither signed, nor addressed by the concerned workman. Therefore, the demand must be supported by substantial number of workmen of the respondent. He further argued that the concerned workman and the President of the association have admitted that only about 60 workmen were members of Mercantile Employees Association New Delhi. So much so no meeting of these 60 workmen was ever held. The demand should have been raised by at least 23 per cent of the total number of workmen of the respondent concern according to norms laid down by the Supreme Court. He further argued that at the conciliation stage the dispute was between the union and the management. Therefore it cannot be admitted at this stage that it was an individual dispute. He also argued that representation and raising of demand were two different things. Shri R.N. Roy President of the Association had a right to represent the workman individually but not to raise the demand. He cited 1968 I LLJ page 834, 1961 I LLJ page 504, 1971 II LLJ page 225, 1975 I LLJ page 295. In 1975 I LLJ page 293 it was held that :—

“But when the dispute is sponsored or espoused by a union, it seems to have been uniformly held by the judicial decisions that when the authority of the union is challenged by the employer, it must be proved that the union has been duly authorised either by a resolution by its member or otherwise that it has a authority to represent the workman whose cause it is espousing.

The representative for the workman stated that he had authority to raise the demand and that espousal was not necessary. He cited 1977 II LLJ page 207. This ruling states that the reference of an individual dispute under section 2(a) would be valid even after it is espoused by the trade union. Therefore this ruling does not help the workman because his case was not espoused by the union of the workman or the concerned management. Mercantile Employees Association New Delhi had only about 60 workmen of the concerned management on their rolls. Whereas there were about 3000 workmen in this concern. In view of my above discussions, I decide issue No. 2 against the workman. I hold that the Mercantile Employees Association had no locus standi to raise the dispute.

Issue No. 1.—As discussed above in 1977 II LLJ at page 207 in which it is held as under :—

“Merely because in express terms no dispute was raised before the management by workman, it could not be said that in fact there was no dispute and hence the reference was incompetent. Where in a dispute between an individual workman and his employer, a notice of demand was issued by the union, and not by the workman himself, such espousal by the union would make the dispute a collective one, but it does not merely on that account cease to be a dispute between the individual and his employer or take the dispute out of the purview of S.2.A.

Therefore, this issue is decided accordingly.

Issue No. 3.—In view of adverse finding on issue No. 2 there is no necessity of deciding this issue.

In view of my finding given on issue No. 2, I give my award that the workman is not entitled to any relief.

Dated: 1-9-80.

M.C. BHARDWAJ,

Presiding Officer, Industrial
Tribunal Haryana Faridabad.

No. 813

Dated 3rd September, 1980.

Forwarded (four copies) to the Secretary to Government Haryana, Labour Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ

Presiding Officer, Industrial
Tribunal Haryana, Faridabad.